IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5768 OF 2006

M/s Bharat Petroleum Corporation Ltd, Petitioner (Orig.Deft)

Vs

1. Mrs Goolistan Peter Coelho and ors Respondents (Orig.Plffs)

Mr C.R.Dalvi,senior counsel with Mr S.R.Page, for the petitioner.

Mr N.V.Walawalkar, senior counsel with Mr Rajiv Patil i/b Mr K.A.Sampant,for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 30.08.2006

PC:

1. Rule. Returnable forthwith. The learned senior counsel, waives service for the respondents. By consent, rule is heard forthwith.

2. This writ petition is directed against the order dated 22.3.2006 passed by the learned Addl. Chief Judge of the Small Causes Court at Bombay in Interim Notice no.10 of 2005 in Appeal No.191 of 2004 in T.E.& R.Suit No.57/64 of 2001, by which the notice has been made absolute. The trial Court, while disposing of the notice, has passed the following order:-

" The notice is made absolute.

The stay to the execution of the decree is

granted subject to the following conditions.

(a) The appellants to deposit the mesne profits at the rate of Rs.1,81,300/- per month from 1/6/2001 till disposal of the appeal within three months from the date of this order.

(b) If the respondents/plaintiffs shall make an application for inquiry of mesne profits in the trial Court and if the trial Court fixed the said amount then the amount of Rs.1,81,300/- be adjusted the excess amount in future rent or refunded the said excess amount to the appellants within three months from the date of that order.

(c) The respondents/landlord to file an undertaking to the court on affidavit in this Court stating that the amount recovered by them in terms of order can be refunded or adjusted in the future rent if the appeal of the appellants is allowed.

An undertaking as directed above shall be filed within 15 days from the date of this order."

3. I heard the learned senior counsel for the parties for quite some time and they have agreed for the following order and have fairly stated that I need not record reasons for the same. Hence, I pass the following order:

(a) The petitioner shall deposit 50 percent of the mesne profits/compensation at the rate of Rs.1,81,300/- per month from 1.6.2001 to July, 2006, within six weeks from today in the trial court and shall furnish the bank guarantee of a nationalised bank of the remaining 50 percent amount within six weeks from today and shall keep it alive till disposal of the appeal (Appeal No.191

of 2004) and the application that will be filed by the respondents-plaintiffs for enquiry of mesne profits in the trial court, whichever is later and for a period of 15 days therefrom.

(b) Liberty to the respondents-plaintiffs to file an application for enquiry of mesne profits in the trial court within four weeks from today and if such an application is filed same may be decided on merits in accordance with law as expeditiously as possible and preferably within a period of six months from the date of filing of such application.

(c) Insofar as the amount of which the petitioner will be furnishing the bank guarantee shall carry bank interest, if ultimately that amount is liable to be paid to the respondents-plaintiffs from the date of the order impugned in the present petition. The amount of interest shall be decided by the trial Court dealing with the application for enquiry of mesne profits.

(d) The statement made by the learned senior counsel for the respondents-plaintiffs on instructions that they shall not either withdraw the amount deposited or apply for encashment of the bank guarantee till disposal of the appeal and enquiry of mesne profits whichever is later, is accepted.

(e) The petitioner shall keep on depositing the mesne profits/compensation at the rate of Rs.1,81,300/- per

month in the trial Court from August, 2006 onwards till disposal of the appeal on or before 10th of each month. The mesne profits/compensation for the month of August, 2006 is allowed to be deposited within two weeks from today.

(f) The appeal court shall decide the appeal on merits in accordance with law as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

(g) It is needless to express that the appeal court as well as the trial Court dealing with the application for enquiry of mesne profits shall decide it uninfluenced by the observations made in the impugned order.

(h) The appeal court shall pass appropriate orders in respect of the amount to be deposited in the trial Court, as aforestated, directing to invest it in a nationalised bank within two weeks from the date of deposit of the amount.

(i) The decree shall remain stayed till disposal of the appeal subject to conditions, aforestated.

(j) The operative part of the order, reproduced in paragraph 2 of this order, stands modified in the aforesaid terms.

(k) Rule is disposed of. Parties to act on an authenticated copy of this order which may be made available to them.

(D.B.BHOSALE,J.)